

1405

United States

1405

# Circuit Court of Appeals

For the Ninth Circuit.

C. R. HOOPER, Doing Business as HOOPER MANUFACTURING COMPANY, L. H. COOLIDGE and C. V. HULL, Copartners as L. H. COOLIDGE COMPANY, SEATTLE SHIPBUILDING AND DRY DOCK COMPANY, a Corporation, UNION OIL COMPANY OF CALIFORNIA, a Corporation, SEATTLE HARDWARE COMPANY, a Corporation and SAMUEL CLARK,

Appellants,

vs.

KUNKLER TRANSPORTATION COMPANY, a Corporation, and FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Appellees.

## Apostles on Appeal.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

FILED

AUG 19 1924

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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C. R. HOOPER, Doing Business as HOOPER MANUFACTURING COMPANY, L. H. COOLIDGE and C. V. HULL, Copartners as L. H. COOLIDGE COMPANY, SEATTLE SHIPBUILDING AND DRY DOCK COMPANY, a Corporation, UNION OIL COMPANY OF CALIFORNIA, a Corporation, SEATTLE HARDWARE COMPANY, a Corporation and SAMUEL CLARK,  
Appellants,

vs.

KUNKLER TRANSPORTATION COMPANY, a Corporation, and FIDELITY & DEPOSIT COMPANY OF MARYLAND,  
Appellees.


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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF COUNSEL.

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Proctor for C. R. Hooper, Appellant.

PHILIP D. MacBRIDE, Esq., 912 Hoge Building,  
Seattle, Washington,

Proctor for L. H. Coolidge and C. V. Hull,  
Appellants.

Messrs. HASTINGS & STEDMAN, 510 Haller  
Building, Seattle, Washington,

Proctors for Seattle Shipbuilding & Dry  
Dock Company, Appellants.

Messrs. STRATTON & KANE, 710 L. C. Smith  
Building, Seattle, Washington,

Proctors for Union Oil Company, Appel-  
lant.

Messrs. HERR, BAYLEY & CROSON, 900-06  
Leary Building, Seattle, Washington,

Proctors for Seattle Hardware Company,  
Appellant.

Messrs. BYERS & BYERS, 310 Marion Building,  
Seattle, Washington,

Proctors for Samuel Clark, Appellant.

Messrs. HARTMAN & HARTMAN, 300-306 Burke  
Building, Seattle, Washington,

Proctors for Kunkler Transportation Com-  
pany, Appellees.

Messrs. GRINSTEAD, LAUBE & LAUGHLIN,  
314 Colman Building, Seattle, Washington,

Proctors for Fidelity & Deposit Company  
of Maryland, Appellees. [1\*]

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\*Page-number appearing at foot of page of original certified Apostles  
of Appeal.

In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners  
as L. H. COOLIDGE COMPANY,  
Intervening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;



SEATTLE HARDWARE COMPANY,  
Intervening Libelant;  
SAMUEL CLARK,  
Intervening Libelant;  
FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,  
Surety on Bond to Marshal.

STATEMENT.

July 19, 1923, this suit was commenced by filing a libel in Cause 7798 by the Seattle Shipbuilding & Dry Dock Company against the steamer "Dauntless."

July 20, 1923, claim was interposed by the Kunkler Transportation [2] & Trading Company, after seizure by the Marshal of the steamer "Dauntless" on July 18th. The Fidelity & Deposit Company of Maryland was surety upon the delivery bond, and the vessel was released to said claimant.

Aug. 7th, 1923, written tender was served by the claimant of redelivery to the Marshal, and filed August 8, 1923.

Aug. 15th, 1923, the Court directed redelivery to the Marshal preserving all rights to the libelant as of Aug. 8th. Tender of redelivery was filed with the clerk on Aug. 8th.

Aug. 17th, 1923, intervening libel of Union Oil Company filed, and monition issued.

Aug. 23d, 1923, answer of Kunkler Transportation & Trading Company was filed.

- Aug. 25th, 1923, intervening libel Seattle Hardware Company filed.
- Aug. 28th, 1923, petition of Fidelity & Deposit Company of Maryland filed.
- Sept. 4th, 1923, intervening libel of Samuel Clark filed.
- Sept. 17th, 1923, order of consolidation of cause with Cause 7819.
- Sept. 21st, 1923, trial before the Hon. Jeremiah Neterer, no reference.
- Sept. 25th, 1923, memorandum decision filed.
- Aug. 8th, 1923, original libel in Cause 7819 filed, monition issued and vessel seized.
- Aug. 22d, 1923, Marshal's return filed, showing seizure Aug. 8th.
- Aug. 24th, 1923, intervening libel of L. H. Coolidge Company filed.
- Aug. 24th, 1923, monition issued on intervening libel.
- Aug. 30th, 1923, interlocutory decree of default entered.
- Sept. 10th, 1923, order continuing sale to September 17th.
- Sept. 17th, 1923, order consolidation with Cause 7798.
- Sept. 18th, 1923, Marshal's return showing sale for \$3550.00.
- Sept. 21st, 1923, trial before Honorable Jeremiah Neterer. [3]
- Sept. 25th, 1923, memorandum decision filed in Cause No. 7798.

July 28, 1924, final decree entered.

July 28th, 1924, notice of appeal served and filed.

[4]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as the HOOPER  
MANUFACTURING & MACHINE WORKS,  
Libellant,

vs.

Steamer "DAUNTLESS,  
Respondent,

LIBEL OF C. R. HOOPER.

To the District Court of the United States for the Western District of Washington.

The libel of C. R. Hooper against the American steamer "Dauntless," her tackle, apparel, and furniture, and against all persons intervening for their interest in said steamer, in a cause of contract, civil and maritime, alleges as follows:

I.

That the libellant is, and at all times herein mentioned was, engaged in the business of operating a machine and pipe shop in the City of Seattle, within said district, and that libellant conducts said business as a sole trader under the name and style of Hooper Manufacturing & Machine Works.

## II.

The said steamer "Dauntless" is an American vessel heretofore engaged in carrying freight and passengers upon the waters of Puget Sound.

## III.

That while said steamer was in the Port of Seattle, during the months of July and August, 1923, the libellant at the instance and request of the master and owner of said vessel [5] furnished materials, and performed labor upon said vessel of a just and reasonable value of two hundred and 23/100 (\$200.23) dollars; and that said material and labor have gone into said steamer in the necessary repairing, altering, equipping and furnishing thereof, and have become a part thereof, and that the said sum of two hundred and 23/100 (\$200.23) dollars remain wholly unpaid.

## IV.

All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, and that said vessel is now in the port of Seattle and within the jurisdiction of this Court.

WHEREFORE the libellant prays, that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said steamer, her tackle, apparel and furniture, and that all persons claiming any right, title or interest in the said steamer, may be cited to appear and answer upon oath all and singular the matters aforesaid, and that the said vessel may be condemned and sold to

pay the amount due to the libellant, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

PHILIP D. MacBRIDE,  
Proctor for Libellant. [6]

United States of America,  
Western District of Washington,—ss.

C. R. Hooper, being sworn, says that he is the libellant above named; that he has read the foregoing libel, knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. R. HOOPER.

Sworn to before me this 8th day of August, 1923.

PHILIP D. MacBRIDE,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 8, 1923. F. M. Harshberger, Clerk. By F. L. Crosby, Jr., Deputy. [7]

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

vs.

Steamship "DAUNTLESS," Her Engines, Boilers,  
Tackle, Apparel and Furniture,

Respondent.

**LIBEL OF SEATTLE SHIPBUILDING &  
DRY DOCK COMPANY.**

To the Honorable Judges of the United States District Court for the Western District of Washington, Northern Division, Sitting in Admiralty:

The libel and complaint of the Seattle Shipbuilding & Dry Dock Company, a corporation, of Seattle, Washington, against the steamship "Dauntless," her engines, boilers, tackle, apparel and furniture, and against all persons lawfully intervening for their interests therein, in a cause of contract, civil and maritime, alleges as follows, to wit:

1.

That said steamship "Dauntless" is a domestic vessel plying in the waters of Puget Sound in Admiralty Inlet, with her home port at Seattle, Washington, and is owned by the Kunkler Trans-



portation & Trading Company, a corporation, and she is now in the port of the City of Seattle and within the Western District of Washington, Northern Division thereof.

2.

That the libelant, at all times herein mentioned, was, and still is, a corporation organized under the laws of the State of Washington, with its principal place of business at Seattle, Washington, and has paid its annual license fees last due to the State of Washington, and has in all manner complied with the law authorizing it to wage this action. That it is engaged in the general business of shipbuilding and repairing. [8]

3.

That said steamship "Dauntless," on or about the 27th day of February, 1923, requested the libelant to perform work and furnish materials in making repairs to said steamship "Dauntless," in order to render her seaworthy and competent for her service as a freight and passenger steamer in Puget Sound, and that at the request of said Kunkler Transportation & Trading Company, the then owner, your libelant did furnish labor and repair the same for the purposes aforesaid, and did thereafter furnish new machinery, make said repairs to other machinery thereon and other general repairs, as fully appears in the accounts hereto annexed, marked Exhibit "A," and made a part hereof, amounting in all to \$5,344.92, of which \$2,840.34 was for labor and \$2,504.58 was for material.

4.

That said steamer could not with safety have proceeded to sea and engaged in the carriage of passengers and freight without said repairs, and said repairs were made on the credit of said steamship "Dauntless."

5.

That said libelant has repeatedly requested said Kunkler Transportation & Trading Company to pay it said sum of \$5,344.92, but no portion thereof has been paid, save and excepting the sum of \$500.00 on May 22, 1923, and \$500.00 on May 31, 1923, so that there remains wholly due and unpaid the sum of \$4,344.92, with interest thereon from June 5, 1923, the date when the last of said work and material were furnished.

6.

That under the laws of Washington and under the general maritime laws, your libelant is entitled to a lien upon said vessel for said labor and materials, constituting said labor and said repairs.

7.

That all and singular the premises are true and within [9] the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process of attachment in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against said steamship "Dauntless," her engines, boilers, tackle, apparel and furniture, and that



said Kunkler Transportation & Trading Company and all other persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters so articulately propounded, and that this Honorable Court will be pleased to pronounce for the libelant, and will grant such relief to the libelant as shall to law and justice appertain, and shall condemn said ship, her engines, boilers, tackle, apparel, machinery and furniture, and the parties intervening therein in costs, and that said vessel, her engines, boilers, machinery, tackle, apparel and furniture may be condemned and sold to pay the same, and that this Honorable Court shall grant to the libelant such other and further relief as to the Court may seem meet and proper.

H. H. A. HASTINGS,  
LIVINGSTON B. STEDMAN,  
Proctors for Libelant.

State of Washington,  
County of King,—ss.

Andrew W. Carlson, being first duly sworn, on his oath deposes and says:

That he is the vice-president and manager of the Seattle Shipbuilding & Dry Dock Company, libelant above named; that he has read the foregoing libel, knows the contents thereof, and that the same is true, and that there is due to said libelant and unpaid for repairs and labor performed by libelant upon said [10] steamship "Dauntless" the full sum of \$4,344.92.

ANDREW W. CARLSON.

Subscribed and sworn to before me this 19th day of July, A. D. 1923.

[Seal] ROSE E. MOHR,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

### EXHIBIT "A."

[Billhead of Seattle Shipbuilding and Dry Dock Company.]

May 31, 1923.

SOLD TO Str. "Dauntless," and Owners, Kunkler Transportation & Trading Co., Pier 3, Seattle, Washington.

Customer's Order—Capt., Chief.

Our Order—331.

Work done on above vessel from May 16th to May 25th, 1923, inclusive;

Machine tools used on repair work from Feb. 27th to May 25th, 1923, incl.;

Materials furnished for repairs and on orders of Chief Engineer from Feb. 27th to May 25th, 1923, inclusive;

Completing machinery and boiler repairs to the above vessel, as per instructions; furnishing machinery and installing new propellor; dry docking, cleaning and painting vessel; etc.; etc.:

LABOR: (Additional to our invoice of May 16th.)

Machinist	104	hr.	@	1.20	124.80
" Helper	22½	"		.85	19.12
Blacksmith	15	"		1.20	18.00
" Helper	13	"		.85	11.05
Pipefitter	54½	"		1.20	65.40
Carpenter	4	"		1.20	4.80
Caulker	8	"		1.30	10.40
Dock laborer	55½	"		.85	47.17
Foreman	10	"		1.40	14.00

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\$314.74

MACHINE TOOLS:

Lathe	65	hr.	@	.75	48.75
Shaper	4½	"		.75	3.37
Drill press	25½	"		.75	19.13
Compressor	23	"		1.50	34.50
Derrick	1½	"		2.00	3.00

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108.75

DRY DOCKING:

Docking and undocking					30.00
Lay days on dock	3		@	15.00	45.00

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75.00

MATERIALS:

Per list attached	2102.64	
Handling charge, ten per cent (10%)	210.26	2312.90
		<hr/>
Total		\$2810.39

[12]

[Billhead of Seattle Shipbuilding and Dry Dock Company.]

May 31, 1923.

Sold to Str. "Dauntless," and Owners, Kinkler Transportation & Trading Co., Pier 3, Seattle, Wash.

Customer's Order.

Our Order—331.

MATERIALS: (Shown at cost) 10% handling charge to be added.

Iron pipe and fittings	543.21
Valves incl. reducing valve, pump, governor, whistle valve	168.48
Copper main steam pipe	92.32
Steam gauges	5.35
Hot well tank	36.47
Steel plate and sheets	259.33
Steel shapes and bars	61.09
Iron castings	41.90
Brass castings	1.18
Patterns	31.50
Babbitt metal	3.34
Fir, oak and iron bark lumber	32.05
Asbestos blocks and cement	105.83

Electric welding .....	135.90
Acetylene and oxygen .....	9.85
New cast iron propellor .....	207.22
Sheet and spiral packing ....	31.41
Red lead putty etc. ....	23.14
Kerosene .....	4.27
Copper paint .....	33.08
Iron paint .....	1.84
Lard oil, etc. ....	3.94
Oakum and cement .....	1.52
Hack saw blades, files, emery cloth .....	4.89
Rags .....	4.62
Hand fire pump .....	15.00
Canvas .....	24.02
Bolts, nuts, rivets, studs ma- chine screws .....	79.56
Spikes, nails, screws, lags ....	30.18
Deck plates .....	5.25
Zinc plate .....	2.17
Oil pan, pump .....	2.60
Generator brushes .....	2.10
Blue prints for U. S. Inspectors	4.14
Express charges and cartage ..	46.49
Tempory lights .....	6.30
Fresh water .....	2.30
Outside machine work during strike .....	38.80

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\$2102.64

[Billhead of Seattle Shipbuilding and Dry Dock  
Company.]

May 16, 1923.

Sold to Str. "Dauntless," and Owners, Kunkler  
Transportation & Trading Company, Pier 3,  
Seattle, Wash.

Customer's Order.

Our Order—331.

Work done on above vessel Feb. 27th to May  
15th, 1923, incl.

Overhauling auxiliary machinery;

Building new casing for boiler;

Installing new pipe lines;

All as directed by Chief Engineer;

Making miscellaneous hull and machinery repairs  
as directed by Captain and Engineer:

LABOR:

Machinist	721	hrs.	@ 1.20	865.20
" Helper	307½	"	.85	261.37
Blacksmith	61	"	1.20	73.20
" Helper	42½	"	.85	36.13
Boilermaker	161½	"	1.20	193.80
" Helper	71	"	.85	60.35
Burner	39½	"	1.20	47.40
Electrician	7	"	1.20	8.40
Carpenter	39½	"	1.20	47.40
Pipefitter	414½	"	1.20	497.40
" Helper	184	"	.85	156.40
Rigger	10½	"	1.20	12.60

*Kunkler Transportation Company et al.* 17

Laborer	11	“	.85	9.35
Foreman	143½	“	1.40	200.90

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Total labor to date.....\$2469.90

This invoice covers labor only.

May 22, 1923	cash on account	500.00	
“ 31, 1923	“	500.00	1000.00

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Balance due .....\$1469.90

[14]

[Billhead of Seattle Shipbuilding and Dry Dock Company.]

June 25, 1923.

Sold to Str. “Dauntless,” and Owners, Kunkler Transportation & Trading Company, Pier 3, Seattle, Wash.

Customer’s Order.

Our Order—432.

To misc. work done on May 31, 1923 and June 5, 1923:

LABOR:

Machinist	33 hrs.	@	1.20	39.60
“ Helper	14	“	.85	11.90
Foreman	3	“	1.40	4.20

---

MATERIAL:

Nuts, bolts, nipples	.....	1.90
Steel and packing	.....	.88



Lampwick .....	.55	
Pipe 2" .....	4.79	
		8.12
Handling charge ten per cent (10%)	.81	8.93
		Total
		\$64.63

[15]

In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libelant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimant.

CLAIM.

To the Honorable, the Judges of Said Court:

Comes now Kunkler Transportation & Trading  
Company, a Washington corporation, with its prin-  
cipal place of business in Seattle, in said District,  
owner of said steamship "Dauntless," her tackle,  
apparel and furniture, intervening for its interest



in said vessel, her tackle, etc., appear before this Honorable Court and claim the said vessel, her tackle, etc., and states that it is the true and *bona fide* owner thereof, and that no other person or corporation is the owner thereof.

WHEREFORE, it prays to be admitted to defend accordingly, and that the said Court will be pleased to decree a restitution of the same to it and otherwise right and justice to administer in the premises.

KUNKLER TRANSPORTATION &  
TRADING COMPANY.

By C. A. McMASTERS,  
Its President.

Subscribed and sworn to before me this 20th day of July, 1923.

[Seal] DWIGHT D. HARTMAN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

HARTMAN & HARTMAN,  
Proctors for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 29, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libellant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

### ANSWER.

Comes now Kunkler Transportation & Trading  
Co., claimant, and for answer to the libel filed  
herein, states:

#### I.

It admits the allegations contained in the first,  
second, and seventh paragraphs thereof.

#### II.

That the libellant performed certain labor and  
furnished certain material upon and for said ves-  
sel, and respectfully calls for full proof to establish  
the same.

#### III.

That libellant submits that judgment may be  
taken for the amount that may be found to be truly  
due on account of work done and materials fur-

nished, as aforesaid, conditioned that the vessel shall be ordered sold immediately and at the earliest practical date, so as to lessen the cost of maintenance and marshal's supervision and that the vessel may again be put into the trade on Puget Sound.

For further answer to said libel, the said claimant submits and states: [17]

I.

That when the delivery bond was given and the vessel returned by the marshal to claimant, said bond was conditioned that the surety should be liable unless the vessel was returned to the custody of the marshal, in which event the liability should end and said vessel was returned to the custody of the marshal, in accordance with the terms of the delivery bond, and the order of this Court made directing such return, and since said date the said marshal has been in possession under the order of the Court and in accordance with the terms of the bond, and the said surety, Fidelity & Deposit Co., of Maryland, is now entitled to full release.

WHEREFORE, the said claimant prays that this its answer may be taken under consideration, that a hearing may be speedily and at once had, the claimant waiving the notice required by the rule, and stands ready to have a hearing when ordered by the Court, and that the Court may give and grant such relief as may be just and equitable and make such orders and decrees as shall be according to the right and the understanding agree-

ment between the parties hereto, including the said surety aforesaid.

HARTMAN & HARTMAN,  
Proctors for Claimant.

State of Washington,  
County of King,—ss.

C. A. McMasters, being first duly sworn upon oath says: That he is the president of the said claimant, that he has read the foregoing answer and knows the contents thereof and believes the allegations therein contained to be true.

C. A. MacMASTERS.

Subscribed and sworn to before me this 22d day of August, 1923.

[Seal] HAROLD H. HARTMAN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 23/23. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libelant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

REDELIVERY OF VESSEL.

To E. B. Benn, United States Marshal, and All  
Other Parties Concerned:

WHEREAS the undersigned, the Kunkler  
Transportation and Trading Company, a corpora-  
tion of the State of Washington, as principal, and  
the Fidelity and Deposit Company of Maryland,  
as surety, did, on July 20, 1923, execute and deliver  
their bond in the above-entitled cause in a sum  
not exceeding Six Thousand Dollars (\$6,000.00);  
and,

WHEREAS the condition of such bond is that  
the principal shall either pay any judgment and  
abide by any and all orders and decrees made by  
said court in the above-entitled cause, or, in lieu  
thereof, shall redeliver the above-named steamship

“Dauntless,” her tackle, apparel and furniture into the possession of the said marshal and abide by any such judgment, as the same may be rendered, or any orders, as the same may be made; and

WHEREAS said principal and surety desire to discharge said bond, according to its terms, by delivering said vessel, her tackle, apparel and furniture into the possession of the said marshal,

NOW, THEREFORE, the said principal and surety hereby redeliver and tender said steamship “Dauntless,” her tackle, apparel [19] and furniture, into the possession of said marshal; said vessel is now situate at Pier Twelve (12), foot of Wall Street, City of Seattle, in the above-entitled district, where immediate possession can be taken, and you are hereby directed so to do.

Dated this 7th day of August, 1923.

KUNKLER TRANSPORTATION &  
TRADING CO.

By CHARLES A. MacMASTER,  
Its President.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND.

By J. A. CATHCART,  
Its Attorney-in-fact.

Copy received this 7th day of August, 1923.

HASTINGS & STEDMAN,  
Proctors for Claimant.  
E. B. BENN,  
U. S. Marshal.



[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 8, 1923. F. M. Harshberger, Clerk. [20]

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In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libellant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Apparel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

#### DELIVERY OF BOND.

WHEREAS, process of the above-entitled court was issued on the 19th day of July, 1923, commanding the marshal of said district to seize and take into his possession the steamship "Dauntless," her tackle, apparel, etc., on account of the claim of the libellant, in the sum of Four Thousand Three Hundred Forty-four and 92/100 Dollars, and in obedience to the writ the said marshal did seize

and take said vessel and is now in possession thereof,

AND WHEREAS, it is agreed between the proctors of the libellant and the proctors of the claimant of said vessel that upon the giving of a bond, with surety, in the sum of Six Thousand Dollars (\$6,000.00), said vessel may be released and returned to the claimants. Now, therefore,

KNOW ALL MEN BY THESE PRESENTS, That we, Kunkler Transportation and Trading Company, a corporation of the State of Washington, with its principal office in Seattle, in said District, as principal, and Fidelity & Deposit Co., of Maryland, as surety, are held and firmly bound unto the said libellant, in [21] a sum not exceeding Six Thousand Dollars (\$6,000.00), for the payment of which, well and truly to be made, we do hereby bind ourselves, our successors, assigns, executors, administrators and heirs, firmly and severally by these presents.

Dated this 20th day of July, 1923.

The condition of the above obligation is such, however, that if the above-bounden principal shall either pay any judgment and abide by any and all orders and decrees made by said court in the above-entitled cause or in lieu thereof shall redeliver said vessel, with her tackle, apparel and furniture, into the possession of the said marshal, and abide by any such judgment as the same may be rendered, or any orders as the same may be made, then this



obligation be void; otherwise to be and remain in full force and effect.

KUNKLER TRANSPORTATION &  
TRADING COMPANY,

By C. A. McMASTERS,

Its President.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND.

By J. A. CATHCART,

Its Agent.

Atty.-in-fact.

The above bond approved this 20th day of July,  
1923.

JEREMIAH NETERER,

Judge.

O. K.—HASTINGS & STEDMAN,

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jul. 20, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libelant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

STIPULATION RE ACCEPTANCE OF CUS-  
TODY AND DELIVERY OF STEAMSHIP  
"DAUNTLESS" BY MARSHAL.

WHEREAS a bond, dated July 20th, 1923, has  
been executed, delivered and filed in the above-en-  
titled cause; and

WHEREAS the principal and surety did, on  
August 7th, 1923, tender and offer to redeliver the  
steamship "Dauntless," her tackle, apparel and  
furniture, into the possession of the United States  
Marshal, and in so doing contend that they are per-  
forming the conditions of the bond; and

WHEREAS the libelant contends that the bond  
cannot be discharged in any such manner; and

WHEREAS the principal and surety on said  
bond desire that the vessel be taken in the custody

of the marshal and held subject to the further order of the Court,—

NOW, THEREFORE, it is hereby stipulated and agreed by and between the libellant and the claimant, through their respective proctors, that the Court may enter its order directing the marshal to accept the custody and delivery of the said vessel "Dauntless," her tackle, apparel and furniture, PROVIDED, HOWEVER, that such acceptance and redelivery shall not affect or in any manner prejudice the rights of any parties hereto as they now exist.

Dated this 8th day of August, 1923.

HASTINGS & STEDMAN,  
Proctors for Libellant.  
HARTMAN & HARTMAN,  
Proctors for Claimants.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 15, 1923. F. M. Harshberger, Clerk. [23]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libelant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

ORDER DIRECTING MARSHAL TO ACCEPT  
REDELIVERY OF VESSEL.

It appearing to the Court that the principal and surety on the bond, dated July 20th, 1923, in a sum not exceeding Six Thousand Dollars (\$6,000.00), have tendered and offered to redeliver the steamship "Dauntless," her tackle, apparel and furniture into the possession of the marshal, and the claimants and libellant having stipulated that the United States Marshal should accept the custody and redelivery of said vessel without prejudice to the rights of any parties as they existed on the date of the stipulation Aug. 8, 1923,—

NOW, THEREFORE, it is hereby ordered that the United States marshal accept the custody of the

steamship "Dauntless," her tackle, etc., and retain the same in his custody until the further order of the court respecting the same.

Done in open court this 15th day of August, 1923.

JEREMIAH NETERER,

Judge.

O. K.—HASTINGS & STEDMAN,

Proctors for Libellant.

O. K.—HARTMAN & HARTMAN,

Proctors for Claimants.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 15, 1923. F. M. Harshberger, Clerk. [24]

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In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libellant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Apparel, etc.;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimants.

## PETITION.

Comes now the Fidelity & Deposit Company of Maryland, a corporation, and, for petition in the above-entitled cause, respectfully shows the Court as follows, to wit:

## I.

That on the 20th day of July, 1923, your petitioner signed, as surety, a stipulation or bond in the above-entitled matter, for the delivery to the claimant, by the United States marshal, on the steamship "Dauntless," and that the terms of said bond or stipulation, which was in the penal sum of Six Thousand (\$6,000.00) Dollars, were as follows:

"The condition of the above obligation is such, however, that if the above-bounden principal shall either pay any judgment and abide by any and all orders and decrees made by said court in the above-entitled cause or in lieu thereof shall redeliver said vessel, with her tackle, apparel and furniture, into the possession of the said marshal, and abide by any such judgment as the same may be rendered, or any orders as the same may be made, then this obligation be void, otherwise to be and remain in full force and effect."

## II.

That on the 7th day of August, 1923, the Kunkler Transportation & Trading Co., claimant, and your petitioner, the Fidelity & Deposit Company of Maryland, tendered redelivery of said vessel [25]



and repossession of the same to the United States marshal.

III.

That on the 8th day of August, 1923, Hastings & Stedman, as proctors for libellant, and Hartman & Hartman, as proctors for claimants, entered into a stipulation that the United States marshal should take possession of said vessel.

IV.

That thereafter, on the 15th day of August, 1923, the court in the above-entitled cause entered an order directing the United States marshal to retake possession of said vessel, and the United States marshal repossessed said vessel on said date and now still is possessed of said vessel.

WHEREFORE, your petitioner, having fully complied with all the terms and conditions of said bond and stipulation, prays that it may be dismissed from said action, that the bond or stipulation herein executed by your petitioner be cancelled and that your petitioner be discharged and exonerated from all further liability in the above-entitled matter.

GRINSTEAD, LAUBE & LAUGHLIN,

HARRY A. RHODES,

Proctors for Fidelity & Deposit Company of Maryland.

United States of America,  
State of Washington,  
County of King,—ss.

Harry A. Rhodes, being first duly sworn, on oath deposes and says:

That he is one of the proctors for the Fidelity & Deposit Company of Maryland and makes this verification to the foregoing petition of said Fidelity & Deposit Company of Maryland for the reason that there is no officer or agent within the State of [26] Washington to make said verification and that the office of said Fidelity & Deposit Company of Maryland is in Baltimore, Maryland.

Affiant further says that he has read the foregoing petition, knows the contents thereof and the same is true as he verily believes.

HARRY A. RHODES.

Subscribed and sworn to before me this 27th day of August, A. D. 1923.

[Notary Seal] J. A. LAUGHLIN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Service by receipt of copy at Seattle, admitted Aug. 27, 1923.

HARTMAN & HARTMAN,  
For Claimant.

HASTINGS & STEDMAN,  
Attys. for Libellant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]



In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libellant,

vs.

The Steamship "DAUNTLESS," Her Tackle, Ap-  
parel, etc.;

Respondent;

KUNKLER TRANSPORTATION & TRADING  
CO.,

Claimant.

EXCEPTIONS OF LIBELLANT TO PETI-  
TION OF FIDELITY & DEPOSIT COM-  
PANY OF MARYLAND.

Comes now the libellant herein and excepts to the  
petition interposed by the Fidelity & Deposit Com-  
pany of Maryland, a corporation, as follows, to  
wit:

1.

That said steamer "Dauntless" was, on said July  
20, 1923, released upon the bond executed by said  
claimant and said Fidelity & Deposit Company  
of Maryland, and that said bond, under the law  
and practice of this Honorable Court, takes the  
place of said vessel, and liability thereon cannot  
be modified or changed by any stipulation therein.

2.

That at the time said bond was tendered to said marshal, said steamer "Dauntless" was encumbered by many maritime liens.

3.

That on August 8, 1923, said steamer "Dauntless" was seized on monition issued by a libel independently filed herein.

4.

That on the 15th of August, 1923, said steamer "Dauntless" was then in possession of said United States under process of this Honorable Court.

5.

That it appears from said petition and the conditions of [28] said bond that said Fidelity & Deposit Company agreed to abide by such judgment as may be rendered after a redelivery of said vessel to said marshal.

6.

That on the face of said petition, said petitioner, Fidelity & Deposit Company, is not entitled to be dismissed from said action or to be relieved from its liability on said bond.

H. H. A. HASTINGS,

LIVINGSTON B. STEDMAN,

Proctors for Libellant.

United States of America,  
State of Washington,  
County of King,—ss.

Livingston B. Stedman, being first duly sworn, on his oath deposes and says:

That he is secretary of, and one of the proctors

for, the libellant herein; that he makes this verification to the foregoing exceptions for and on behalf of libellant; that he verily believes that said exceptions are true and well-founded in law and under the practice of this Honorable Court.

LIVINGSTON B. STEDMAN.

Subscribed and sworn to before me this 27th day of August, A. D. 1923.

ROSE E. MOHR,

Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

Libellant,

vs.

Steamship "DAUNTLESS," etc.,

Respondent.

### ORDER FOR CONSOLIDATION.

Now on this 17th day of September, 1923, upon motion of W. B. Stratton, proctor for Union Oil

Co. it is ordered that these two cases numbered 7798 and 7819 be now consolidated for trial and further proceedings.

Journal No. 11, page No. 298. [30]

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In the United States District Court for the Western  
District of Washington, Northern Division.

IN ADMIRALTY—No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK CO.,  
a Corporation,

Libelant,

vs.

SS. "DAUNTLESS,"

Respondent,

and

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,

Libelant,

vs.

SS. "DAUNTLESS,"

Respondent.

DECISION.

Filed 9-24-23.

On the 10th day of July libel was filed, monition issued, and vessel attached. On the 20th a bond was filed for its release. "The condition of the

above obligation is such, however, that if the above bounden principal shall either pay any judgment and abide by any and all orders and decrees made by said court in the above-entitled cause, or in lieu thereof shall deliver said vessel, with her tackle, apparel and furniture, into possession of the said marshal and abide by any judgment as the same may be rendered, or any orders as the same may be made, then this obligation be void, otherwise to be and remain in full force and effect."

The bond was O. K.'d by the proctors for the libelant, it now appears through inadvertence, and was approved by the court. On August 7, the surety and claimant tendered the vessel to the marshal, who declined to receive it. August 8th another original libel was filed by Hooper Mfg. Co., monition issued, and the vessel attached. On August 15 upon stipulation of the surety and the libelant an order directing the marshal to receive the vessel was entered. Intervening libels were filed in each case; the libels were consolidated and the vessel sold. The bonding company has appeared and is asserting exemption from liability because of the tender of the ship pursuant to the clause in the bond. The other parties are asserting that this right cannot obtain. The Hooper Mfg. Co. and L. H. Coolidge & Co., intervenor in the Hooper case, contend that their claims should be paid in full, and the balance prorated among the other intervening libelants, since the vessel was sold in the Hooper Mfg. Co. libel proceeding, and no intervention in that case was made by the other parties. The other

intervening libelants contend that the claim of the Dry Dock Co. rests upon the bond, and that its lien against the vessel was released when the bond was filed, and that all of the other claims should be prorated in the fund upon the proper classification.

HASTINGS & STEDMAN, Proctors for the Libelants, Seattle S. & Dry Dock Co.

STRATTON & KANE, Proctors for Union Oil Co.,  
Intervenors.

BYERS & BYERS, Proctors for Samuel Clark,  
Intervenor.

HERR, BAYLEY & CROSON, Proctors for Seattle  
Hardware Co., Intervenors.

HARTMAN & HARTMAN, Proctors for Respondent.

PHILLIP D. McBRIDGE, Proctor for Intervenor  
L. H. Coolidge, and for Libelant, C. H. Hooper  
Mfg. Co.

GRINSTEAD, LAUBE & LAUGHLIN, Proctors  
for Surety.

NETERER, District Judge. [31]

Discharge of a vessel upon stipulation for the payment of the claim frees the vessel from the lien, and she cannot be arrested again for the same cause of action. *The Union*, 24 Fed. Cas. 535; *The Josephine*, 21 Fed. Cas. 1075. In these cases the bond was for the payment of the claim, and the release was absolute, and the Court had no power to assert authority over the *rem* which had been



released. In the instant case the condition of the bond is that the

“Principal shall *either* pay any judgment and abide \* \* \* any \* \* \* decree \* \* \* or in lieu thereof shall return said vessel, and abide any judgment as the same may be rendered. \* \* \* ”

There is expressed a clear intent of an alternative obligation; one to pay the judgment and abide the decree, the other to return the ship. Judge Brown in *The William McRae*, 23 Fed. 557, employed language which indicates that the intention of the parties to subject the vessel to the further jurisdiction of the court has force. At page 558 he says:

“The Court had no power in the absence of fraud or mistake to order her arrested a second time, and that the fact that the first suit was discontinued with the consent of the claimant indicates no intention actual or in law to subject the vessel to a second arrest, or to waive the rights in that respect, which then belonged to them.”

The *Old Concord*, 18 Fed. Cas. 642, was a general stipulation to pay the claim. The Court held the acceptance of the stipulation had released the vessel from the lien and that the subsequent insolvency of the sureties did not empower the court to reinvest the liens.

It is asserted by the libelant and intervening libelants that the phrase “or in lieu thereof shall redeliver said vessel, etc.,” is out of harmony with



the other provisions of the bond, and renders it ambiguous and doubtful, and that the bond must be most strongly construed against the surety. It is also said, that the bond is given pursuant to the provisions of Sec. 1567 C. S., which requires the bond to be “conditioned to answer the decree of the Court in such cause, \* \* \* ” and that the Court cannot now assert jurisdiction over the *rem.* On the other hand it is said, that the bond is not statutory, or pursuant to Sec. 1567, C. S., but is an independent stipulation between the parties, and should have operation as such pursuant to the intent therein expressed. Judge Story, in *The Alligator*, 1 Fed. Cas. 527, No. 248 (1812), held: That the Court, by [32] virtue of its general admiralty jurisdiction has inherent power to deliver property on bail. Justice Clifford, for the Supreme Court, in *U. S. vs. Ames* (1878), 99 U. S. 35, at p. 40, said:

“Courts have an undoubted right to deliver the property on bail and enforce conformity to the terms of the bailment.” And further on the same page: “Having jurisdiction of the principal cause the court must possess the power over all its incidents. \* \* \* ”

This order having been entered pursuant to the agreement of the parties (there being nothing in the law prohibiting it), and the vessel having been returned in obedience to the stipulation, the parties may not now avoid the alternative provision of the stipulation. The Court may not make a contract. The recitals in the bond are conclusive. The purpose for which it was given is plain. The intent

of the parties appears clearly to be in the alternative, and having been agreed to by the proctors for the libelant and approved by the Court the jurisdiction of the Court extends to the *rem* to the extent that the vessel may be returned to the marshal pursuant to the stipulation in the bond, and if the vessel is in the same condition that it was when released the exemption must obtain. That the liens attached when the vessel was released is established. There is no testimony of physical deterioration. All of the lien claimants are in the same situation as if the stipulation had not been given, and have gained the keepers expense for the time the vessel was out of the marshal's custody. The Court no doubt had jurisdiction to direct the marshal upon the record in this case to receive the ship under the terms of the bailment.

The contention of the Hooper Mfg. Co. in the second original libel and the L. H. Coolidge Mfg. Co., intervenors therein, that their claims should be paid in full and the balance of the proceeds distributed among the other claimants cannot be sustained. The second intervening libel should not have been filed, but the claims should have been asserted in the first original libel filed. The cause being consolidated, all claimants will be treated as of that relation. Decrees will be entered in favor of the several claimants as follows: Libelant \$4147.42; Union Oil Co., \$1062.83; Seattle Hdwe. Co., \$518.86; Clark, \$785.05; and \$225 for wages, which is preferred; Hooper Mfg. Co., \$200.15; L. H. Coolidge & Co., \$197.50. The claimants, except Clark's pre-

ferred amount will prorate the balance of [33] the fund in the court's exchequer after the payment of the costs. The surety will be released.

NETERER,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 25, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [34]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," etc.,  
Respondent.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond of Marshal;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant.

L. H. COOLIDGE,  
Intervening Libelant.

#### DECREE.

This cause having heretofore come on for trial, and it appearing to the Court that on the 19th day of July, A. D. 1923, a libel was filed in Cause No. 7798 by the Seattle Shipbuilding [35] & Dry Dock Company, a corporation, against the SS. "Dauntless," monition was issued, and the vessel attached, and on or about the 20th day of July, 1923, appearance was made by the Kunkler Transportation & Trading Company, claimant, and a bond was filed, conditioned as follows, to wit:

"The condition of the above obligation is such, however, that if the above bounden principal shall either pay any judgment, and abide by any and all orders and decrees made by said

court in the above-entitled cause, or, in lieu thereof, shall redeliver said vessel with her tackle, apparel and furniture into the possession of said marshal, and abide by any such judgment as the same may be rendered or any orders as the same may be made, then this obligation to be void; otherwise to be and remain in full force and effect.”

That the Kunkler Transportation & Trading Company filed exceptions to the libel but filed no other or further proceedings or pleading in this cause.

That on the 7th day of August, 1923, the Kunkler Transportation & Trading Company, claimant, tendered back to the United States Marshal said SS. “Dauntless,” her tackle, apparel and furniture, and thereafter the court entered an order on, to wit, the 15th day of August, 1923, that the SS. “Dauntless” might be returned to said U. S. Marshal subject to the further order of the court, on stipulation of counsel, without prejudice to the rights of any parties as they existed on August 8, 1923. That said vessel was then in the custody of the United States marshal, and monition issued and attachment made on the libel of C. R. Hooper, in cause No. 7819, filed August 8th, 1923.

That the Union Oil Company filed an intervening libel, claiming \$1,062.83, in cause No. 7798.

The Seattle Hardware Company filed an intervening libel in said cause No. 7798, claiming \$518.86

Samuel Clark filed an intervening libel in said cause No. 7798, claiming \$225 wages and \$785.05 money paid for supplies.



That L. H. Coolidge filed an intervening libel in cause 7819, claiming \$197.50. [36]

That said cause came on duly for trial upon the proofs and allegations of the parties hereto, said Kunkler Transportation & Trading Company appearing not, either in person or by proctor or advocate; the libelant, Seattle Shipbuilding & Dry Dock Company appearing by Hastings & Stedman, its proctors; the Union Oil Company appearing by Stratton & Kane, its proctors; Seattle Hardware Company appearing by Herr, Bayley & Croson, its proctors; Samuel Clark appearing by Byers & Byers, his proctors; C. R. Hooper appearing by Phillip D. Macbride, his proctor; and L. H. Coolidge appearing by Phillip D. Macbride, his proctor; and the surety upon the delivery bond appearing by Grinstead, Laube & Laughlin;

And the Court having listened to the evidence and argument of counsel directed the following decree should be entered in favor of the respective parties, to wit:

In favor of the libelants for.....	\$4,147.42
In favor of the Union Oil Com- pany for .....	1,062.83
In favor of the Seattle Hardware Company for .....	518.86
In favor of Samuel Clark for wages .....	225.00
and for supplies .....	785.05
In favor of C. R. Hooper for ....	200.15
In favor of L. H. Coolidge for ...	197.50

And it appearing to the Court that in cause #7819, upon the failure of any claim being filed for said steamer "Dauntless," a decree *venditioni exponas* was duly made and entered, directing the marshal to sell said steamer "Dauntless," her engines, boilers, tackle, apparel and furniture, as provided by law, and that said sale was duly held by said U. S. marshal and said steamer was sold for the sum of \$3,550.00, which sale was subsequently confirmed by the Court, and said \$3,550.00 paid into the registry of this court in cause No. 7819, and the Court, by written opinion heretofore filed herein, having determined that the surety, Fidelity & Deposit Company of Maryland, by the tender back of said vessel to the U. S. marshal, was entitled to a discharge upon [37] said bond of the Kunkler Transportation & Trading Company, and had performed the conditions thereof by the surrender of said vessel to said marshal.

And it further appearing to the Court that the costs of the U. S. marshal paid by the clerk amounted to \$351.12, and the clerk's costs, \$71.20,—

It is here and now ORDERED, ADJUDGED AND DECREED that the clerk retain \$71.20, its costs;

That there be paid to Hastings & Stedman, proctors for libelant, proctors' fees of \$20.00;

To Stratton & Kane, proctors for the Union Oil Company, a proctors' fee of \$20.00;

To Herr, Bayley & Croson, proctors for Seattle Hardware Company, a proctors' fee of \$20.00;



To Byers & Byers, proctors for Samuel Clark, a proctors' fee of \$20.00;

To Philip D. Macbride, proctor for C. R. Hooper, a proctor's fee of \$20.00;

To Philip D. Macbride, proctor for L. H. Coolidge, a proctor's fee of \$20.00;

To Grinstead, Laube & Laughlin, proctors for the surety, a proctor's fee of \$20.00;

That there be paid to Samuel Clark \$225.00 for wages;

And that the balance be paid into the registry of the court, to wit, \$2,762.68, to be distributed *pro rata* to the libelant and intervening libelants on their respective claims, as follows, to wit:

To Seattle Shipbuilding & Dry Dock Co. ....	\$1,657.72
To Seattle Hardware Company..	207.39
To Union Oil Company .....	424.81
To Samuel Clark .....	313.78
To C. R. Hooper .....	79.80
To L. H. Coolidge .....	78.94

[38]

It is further ORDERED, ADJUDGED AND DECREED that the Fidelity & Deposit Company of Maryland be and it hereby is relieved from all liability on its bond filed for the release of said vessel.

To the entry of that portion of the above decree releasing and exonerating the Fidelity & Deposit Company of Maryland upon its bond filed on July 20, 1923, the libelant excepts and its exception is hereby allowed.

The intervening libelant, Union Oil Company, hereby excepts and its exception is hereby allowed.

The intervening libelant, Seattle Hardware Company, hereby excepts and its exception is hereby allowed.

The intervening libelant, Samuel Clark, excepts and his exception is hereby allowed.

The intervening libelant, C. R. Hooper, excepts and his exception is hereby allowed.

The intervening libelant, L. H. Coolidge, hereby excepts and his exception is hereby allowed.

Done in open court this 28th day of July, A. D. 1924.

JEREMIAH NETERER,

Judge.

O. K.—STRATTON & KANE, For Union Oil  
Co.

HERR, BAYLEY & CROSON, For  
Seattle Hdw. Co.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [39]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners as  
L. H. COOLIDGE COMPANY,

Intervening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,

Intervening Libelant;

SAMUEL CLARK,

Intervening Libellant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond of Marshal.

PETITION ON APPEAL.

To the Honorable JEREMIAH NETERER, Judge  
of the District Court of the United States for  
the Western District of Washington:

The petition of C. R. Hooper, doing business as the Hooper [40] Manufacturing Company, L. H. Coolidge and C. V. Hull, copartners as L. H. Coolidge & Company, Seattle Shipbuilding & Dry Dock Company, a corporation, Union Oil Company of California, Seattle Hardware Company, and Samuel Clark respectfully represents that on the 19th day of July, 1923, in cause No. 7798, in Admiralty, of this court, the Seattle Shipbuilding and Dry Dock Company, a corporation, filed its libel in this court against the steamship "Dauntless," her engines, boilers, tackle, apparel and furniture, to recover for the necessary repairs made upon said steamship, and said steamship was attached and a bond to the marshal was executed on July 20, 1923, and said vessel was released on claim of the claimant, Kunkler Transportation & Trading Company, on said July 28, 1923; that on August 7, 1923, the Kunkler Transportation & Trading Company tendered back to the United States marshal said SS. "Dauntless," her tackle, apparel and furniture; that on August 8,

1923, a libel was filed in cause No. 7819 in this court by C. R. Hooper, doing business as the Hooper Manufacturing Company, against said SS. "Dauntless," and monition was issued and said vessel was seized by the marshal; that on the 8th day of August, 1923, a stipulation was entered into by proctors for the libelant, Seattle Shipbuilding & Dry Dock Company, in case No. 7819, that said vessel might be delivered to the marshal without waiver of any rights of said libelant against said bond to the marshal filed on July 20, 1923, for the release thereof; that on the 15th of August, 1923, the Court entered an order that the SS. "Dauntless" should be returned to the United States marshal subject to the further order of the Court and without prejudice to the rights of any parties as they existed on August 8, 1923; that subsequently the Fidelity & Deposit Company of Maryland filed its petition herein asking to be relieved of liability on its bond by reason of the return of said SS. "Dauntless" to the marshal aforesaid; that on July 28, 1924, a final decree was entered in these causes fixing the amounts due the libelants and intervening libelants, and decreeing that the Fidelity & Deposit Company of Maryland [41] be relieved of its obligation on said bond.

Your petitioners believe that said decree is erroneous and that injustice will be done if same is carried into effect.

Your petitioners, therefore, pray for leave to ap-

peal from said decree to the United States Circuit Court of Appeals for the 9th Circuit.

C. R. HOOPER,

By PHILIP D. McBRIDE,

His Proctor.

L. H. COOLIDGE and C. V. HULL,

By PHILIP D. McBRIDE,

Their Proctor.

SEATTLE SHIPBUILDING & DRY  
DOCK COMPANY,

By HASTINGS & STEDMAN,

Its Proctors.

UNION OIL COMPANY OF CALI-  
FORNIA,

By STRATTON & KANE,

Its Proctors.

SEATTLE HARDWARE COMPANY,

By HERR, BAYLEY & CROSON,

Its Proctors.

SAMUEL CLARK,

By BYERS & BYERS,

His Proctors.

United States of America,  
District and State of Wash.,  
County of King,—ss.

L. B. Stedman, being first duly sworn, on oath deposes and says: That he is the secretary of the Seattle Shipbuilding & Dry Dock Company, libelant above named, and that he is also one of the proctors of said libelant; that he has read the foregoing



petition, knows the contents thereof, and believes same to be true.

L. B. STEDMAN.

Subscribed and sworn to before me this 28 day of July, A. D. 1924.

H. Y. RAMSEY,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [42]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners  
as L. H. COOLIDGE COMPANY,  
Intervening Libelant;



No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelants;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond to Marshal.

#### NOTICE OF APPEAL.

To the Fidelity & Deposit Company of Maryland and to Messrs. Grinstead, Laube & Laughlin, its proctors; Kunkler Transportation & Trading Company and to Messrs. Hartman & Hartman, Its Proctors: [43]

You, and each of you, will please take notice that C. R. Hooper, doing business as the Hooper Manufacturing Company, L. H. Coolidge and C. V. Hull, copartners as L. H. Coolidge & Company, Seattle Shipbuilding & Dry Dock Company, a corporation,

Union Oil Company of California, Seattle Hardware Company, and Samuel Clark, the above-named libelants and intervening libelants, hereby appeal from the final decree of the above-entitled court in the above-entitled causes and from the whole thereof, which decree was made, entered and filed in the above-entitled causes on the 28 day of July, 1924, to the United States Circuit Court of Appeals for the Ninth Circuit.

C. R. HOOPER,

By PHILIP D. MacBRIDE,

His Proctor.

L. H. COOLIDGE and C. V. HULL,

By PHILIP D. MacBRIDE,

Their Proctor.

SEATTLE SHIPBUILDING & DRY  
DOCK COMPANY.

By HASTINGS & STEDMAN,

Its Proctors.

UNION OIL COMPANY OF CALI-  
FORNIA,

By STRATTON & KANE,

Its Proctors.

SEATTLE HARDWARE COMPANY,

By HERR BAYLEY & CROSON,

Its Proctors.

SAMUEL CLARK,

By BYERS & BYERS,

His Proctors.

Copy of the within received this 28th day of July,  
1924.

HARTMAN & HARTMAN.

Copy of the within received Jul. 28, 1924.

GRINSTEAD, LAUBE & LAUGHLIN,  
Attorneys for Surety.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [44]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent,  
L. H. COOLIDGE and C. V. HULL, Copartners  
as L. H. COOLIDGE COMPANY,  
Intevening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond to Marshal.

ASSIGNMENT OF ERRORS ON BEHALF OF  
LIBELANTS AND INTERVENING LIBEL-  
ANTS.

I.

The court erred in this: That the Court directed a return of the SS. "Dauntless" to the United States marshal after her release [45] on the claim of the Kunkler Transportation & Trading Company on its bond to the marshal on which the Fidelity & Deposit Company of Maryland was surety, when said vessel was in the custody of the marshal on monition issued upon the libel of C. R. Hooper, doing business as the Hooper Manufacturing Company.

II.

That the Court erred in this: That the re-delivery of said vessel to said United States marshal released the bond executed by the Kunkler Trans-

portation & Trading Company and the said Fidelity & Deposit Company of Maryland.

III.

That the Court erred in its decree that said Fidelity & Deposit Company of Maryland be released from all liability on its bond filed for the release of said vessel.

C. R. HOOPER,

By PHILIP D. MacBRIDE,

His Proctor.

L. H. COOLIDGE and C. V. HULL,

By PHILIP D. MacBRIDE,

Their Proctor.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY,

By HASTINGS & STEDMAN,

Its Proctors.

UNION OIL COMPANY OF CALI-  
FORNIA,

By STRATTON & KANE,

Its Proctors.

SEATTLE HARDWARE COMPANY,

By HERR, BAYLEY & CROSON,

Its Proctors.

SAMUEL CLARK,

By BYERS & BYERS,

His Proctor.

Approved: JEREMIAH NETERER,

U. S. District Judge.

Copy of the within received this 28th day of  
July, 1924.

HARTMAN & HARTMAN.

Copy of the within received Jul. 28, 1924.

GRINSTEAD, LAUBE & LAUGHLIN.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [46]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;  
L. H. COOLIDGE and C. V. HULL, Copartners  
as L. H. COOLIDGE COMPANY,  
Intervening Libelants;

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant;

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;  
KUNKLER TRANSPORTATION & TRADING  
COMPANY,  
Claimant;



UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond to Marshal.

AFFIDAVIT OF L. B. STEDMAN THAT AP-  
PEAL IS NOT TAKEN FOR DELAY.

United States of America,  
District and State of Wash.,  
County of King,—ss.

L. B. Stedman, being first duly sworn, on his oath  
deposes and says: [47]

That he is the secretary of the Seattle Shipbuild-  
ing & Dry Dock Company, one of the libelants in  
the above-entitled causes, and is one of the proctors  
for said libelant:

That the appeal from the final decree of the  
District Court is not taken for delay, but because  
deponent believes that injustice will be done if the  
decree is carried into effect.

L. B. STEDMAN.

Suscribed and sworn to before me this 28 day  
of July, A. D. 1924.

[Seal] ROSE E. MOHR,  
Notary Public in and for the State of Washington,  
Residing at Seattle.



[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [48]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners  
as L. H. COOLIDGE COMPANY,  
Intervening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,  
Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond to Marshal

ORDER ALLOWING APPEAL AND ORDER  
FIXING BOND ON APPEAL.

And now, to wit, on this 28th day of July, 1924, L. B. Stedman, one of the proctors for the libelant, Seattle Shipbuilding & Dry Dock Company, in behalf of all of the libelants and [49] of the intervening libelants in these causes, comes into court and prays an appeal from the decree of the District Court in the above-entitled causes, from the District Court of the United States for the Western District of Washington, Northern Division, to the Circuit Court of Appeals for the Ninth Circuit, and thereupon the appeal is allowed on the usual conditions, and the Court hereby fixes the bond on appeal in the sum of \$500.00.

Done in open court this 28th day of July, 1924.

JEREMIAH NETERER,

Judge,

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jul. 28, 1924. F. M. Harshberger, Clerk.  
By S. E. Leitch, Deputy. [50]

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In the United States District Court for the Western  
District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners as  
L. H. COOLIDGE COMPANY,  
Intervening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,  
Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,  
Surety on Bond of Marshal.

#### BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, C. R. Hooper, doing business as Hooper Manufacturing Company, libelant, L. H. Coolidge and C. V. Hull, copartners as L. H. Coolidge Company, [51] intervening libelant, Seattle Shipbuilding & Dry Dock Company, a corporation, libelant, Union Oil Company of California, a corporation, intervening libelant, Seattle Hardware Company, intervening libelant, Samuel Clark, intervening libelant, as principals, and the American Surety Company of New York, a corporation duly established by the laws of the State of New York, as surety, are held and firmly bound unto the Fidelity & Deposit Company of Maryland and the Kunkler Transportation & Trading Company, or either of said parties, in the full and just sum of \$500.00 to be paid to said obligees, or either of them, or to their or its attorneys, successors, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, suc-

cessors, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 28th day of July, in the year of our Lord one thousand nine hundred and twenty-four.

WHEREAS, lately in the District Court of the United States for the Western District of Washington, Northern Division, in a suit in admiralty depending in said court between C. R. Hooper, doing business as Hooper Manufacturing Company, libellant, Seattle Shipbuilding & Dry Dock Company, a corporation, libellant, and intervening libellants against the steamship "Dauntless" and the Kunkler Transportation & Trading Company, a claimant, and the Fidelity & Deposit Company of Maryland, surety upon the bond for delivery, a decree was entered in favor of said Fidelity & Deposit Company of Maryland, and said principals to this obligation having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit, and a citation having issued directed to said Fidelity & Deposit Company of Maryland and the Kunkler Transportation & Trading Company citing and admonishing them to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit in the city of San Francisco, [52] California, on the 26th day of August, A. D. 1924.

Now, the condition of the above obligation is such that if said principals shall prosecute their appeal to effect, and pay any decree of the court upon appeal or otherwise, and answer all damages and costs

if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

C. R. HOOPER, Doing Business as  
HOOPER MANUFACTURING COM-  
PANY,

By PHILIP D. MacBRIDE,

His Proctor.

L. H. COOLIDGE and C. V. HULL, Co-  
partners as L. H. COOLIDGE COM-  
PANY,

By PHILIP D. MacBRIDE,

Their Proctor.

SEATTLE SHIPBUILDING & DRY  
DOCK COMPANY,

By HASTINGS & STEDMAN,

Its Proctors.

UNION OIL COMPANY OF CALI-  
FORNIA,

By STRATTON & KANE,

Its Proctors.,

SEATTLE HARDWARE COMPANY,

By HERR, BAYLEY & CROSON,

Its Proctors.

SAMUEL CLARK,

By BYERS & BYERS,

His Proctors.

AMERICAN SURETY COMPANY OF  
NEW YORK,

By A. E. KRULL,

Its Resident Vice-president.

By E. E. PERRY,

Its Resident Assistant Secretary.



Approved:

NETERER,

United States District Judge.

O. K.—HARTMAN & HARTMAN,

Attorneys for Kunkler Transportation &  
Trading Co.

O. K. as to form—GRINSTEAD, LAUBE &  
LAUGHLIN.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [53]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners as  
L. H. COOLIDGE COMPANY,

Intervening Libelants;

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond of Marshal.

STIPULATION RE PRINTING APOSTLES  
ON APPEAL.

IT IS STIPULATED by and between the libelant, C. R. Hooper, through his proctor, Philip MacBride, the libelant, Seattle Shipbuilding & Dry Dock Company, a corporation, through its proctors, [54] Hastings & Stedman, the intervening libelant, Union Oil Company of California, through its proctors, Stratton & Kane, the intervening libelant, Seattle

Hardware Company, through its proctors, Herr, Bayley & Croson, the intervening libelant, Samuel Clark, through his proctors, Byers & Byers, the intervening libelants, L. H. Coolidge and C. V. Hull, through their proctor Philip MacBride, on the one hand, and the Kunkler Transportation & Trading Company, claimant, through its proctors, Hartman & Hartman, and the Fidelity & Deposit Company of Maryland, surety on the bond of claimant to the marshal, through its proctors, Grinstead, Laube & Laughlin, on the other hand, as follows, to wit:

Stipulations for costs were duly filed by all parties appearing, and that in making up the record to be transmitted to the Circuit Court of Appeals, the Clerk of the District Court shall omit therefrom all pleadings save and except:

1. Libel of C. R. Hooper in cause #7819.
2. Libel of the Seattle Shipbuilding & Dry Dock Company in cause #7798.
3. Claim of the Kunkler Transportation & Trading Company.
4. Answer of the Kunkler Transportation & Trading Co.
5. Bond of the Kunkler Transportation & Trading Company and of the Fidelity & Deposit Company of Maryland.
6. Tender of redelivery to the marshal.
7. Stipulation of Hastings & Stedman and Hartman & Hartman, dated August 8, 1923.
8. Order directing marshal to accept redelivery, dated August 15, 1923.

9. Petition of Fidelity & Deposit Company of Maryland for relief of liability on delivery of bond.

10. Exceptions to said petition.

11. Order consolidating causes.

12. Memorandum opinion of court.

13. Final decree.

14. Notice of appeal.

15. Assignment of errors. [55]

16. Bond on appeal.

17. Stipulation for record.

18. Clerk's certificate.

The sole and only question involved on appeal is the decision of the Court that the surrender of the vessel by the claimant satisfied and discharged the delivery bond executed by the claimant and the Fidelity & Deposit Company of Maryland.

Dated at Seattle, Washington, this 28th day of July, A. D. 1924.

C. R. HOOPER,

By PHILIP D. MacBRIDE,

His Proctor.

L. H. COOLIDGE and C. V. HULL,

By PHILIP D. MacBRIDE,

Their Proctor.

SEATTLE SHIPBUILDING & DRY  
DOCK COMPANY,

By HASTINGS & STEDMAN,

Its Proctors.

KUNKLER TRANSPORTATION &  
TRADING COMPANY,

By HARTMAN & HARTMAN,

Its Proctors.

UNION OIL COMPANY OF CALIFORNIA,

By STRATTON & KANE,

Its Proctors.

SEATTLE HARDWARE COMPANY,

By HERR, BAYLEY & CROSON,

Its Proctors.

SAMUEL CLARK,

By BYERS & BYERS,

His Proctors.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

By GRINSTEAD, LAUBE & LAUGHLIN,

Its Proctors.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [56]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER MANUFACTURING COMPANY,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners as  
L. H. COOLIDGE COMPANY,

Intervening Libelants;

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,  
Intervening Libelant;

SEATTLE HARDWARE COMPANY,  
Intervening Libelant;

SAMUEL CLARK,  
Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Surety on Bond to Marshal.

PRAECIPE FOR APOSTLES ON APPEAL.

To F. M. Harshberger, Clerk of the United States  
District Court:

Please prepare the record on appeal and transmit  
to the Circuit Court of Appeals the following in-  
struments: [57]

1. A caption exhibiting the proper style of the  
court and the title of the cause. A statement show-  
ing the time of the commencement of the suit.



Names of the original parties. Names of intervening libelants. Name of Judge hearing cause.

2. Copies of all pleadings and orders as contained in the stipulation for record signed by the parties hereto and filed on July 28th, including the stipulation itself; together with copies of the petition on appeal; order allowing appeal and fixing amount of bond on appeal; and affidavit that appeal is not taken for delay.

HASTINGS & STEDMAN,

Of Proctors for Appellants.

Copy of the within received this 29th day of July, 1924.

HARTMAN & HARTMAN.

Copy of within received Jul. 29, 1924.

GRINSTEAD, LAUBE & LAUGHLIN.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 29, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [58]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 7819.

C. R. HOOPER, Doing Business as the HOOPER  
MANUFACTURING & MACHINE  
WORKS,

Libelant,

vs.

Steamer "DAUNTLESS,"

Respondent.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,

Libelant,

vs.

Steamship "DAUNTLESS," Her Engines, Boil-  
ers, Tackle, Apparel and Furniture,

Respondent,

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO APOSTLES ON APPEAL.

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States  
District Court for the Western District of Wash-  
ington, do hereby certify this typewritten tran-  
script of record, consisting of pages numbered

from 1 to 58, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing-entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain on record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein, from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit. [59]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred, and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit on the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.), for making record, certificate or return 156 folios at 15¢ .....	\$23.40
Certificate of Clerk to transcript of record, 4 folios at 15¢ .....	60
Seal to said certificate .....	20

I hereby certify that the above cost for preparing and certifying record, amounting to \$24.20, has been paid to me by proctor for the appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District

Court at Seattle, in said District, this 7th day of August, 1924.

[Seal] F. M. HARSHBERGER,  
Clerk United States District Court, Western District of Washington.

By S. E. Leitch,  
Deputy. [60]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7819.

C. R. HOOPER, Doing Business as HOOPER  
MANUFACTURING COMPANY,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

L. H. COOLIDGE and C. V. HULL, Copartners as  
L. H. COOLIDGE COMPANY,  
Intervening Libelants.

No. 7798.

SEATTLE SHIPBUILDING & DRY DOCK  
COMPANY, a Corporation,  
Libelant,

vs.

SS. "DAUNTLESS," Her Tackle, Apparel, etc.,  
Respondent;

KUNKLER TRANSPORTATION & TRADING  
COMPANY,

Claimant;

UNION OIL COMPANY OF CALIFORNIA,

Intervening Libelant;

SEATTLE HARDWARE COMPANY,

Intervening Libelant;

SAMUEL CLARK,

Intervening Libelant;

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND,

Surety on Bond to Marshal.

CITATION.

The President of the United States to the Fidelity & Deposit Company of Maryland and to the Kunkler Transportation & Trading Company, GREETING:

You are hereby cited and admonished to be and appear at [61] the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, on the 26 day of August, one thousand nine hundred and twenty-four, pursuant to an appeal from a district of the District Court of the United States for the Western District of Washington, Northern Division, in a certain cause in admiralty, wherein you are intervenor and claimant, respectively, to show cause, if any there be, why the decree rendered against the libelants and intervening libelants and in your favor, as in said decree mentioned, should not be

corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Seattle on this 28th day of July, in the year of our Lord one thousand nine hundred and twenty-four and the 149th year of the Independence of the United States.

JEREMIAH NETERER,  
United States District Judge.

Service of the foregoing citation is hereby admitted this 29th day of July, 1924.

GRINSTEAD, LAUBE & LAUGHLIN,  
Proctors for Fidelity & Deposit Company of Maryland.

HARTMAN & HARTMAN,  
Proctors for the Kunkler Transportation & Trading Company. [62]

[Endorsed]: No. ——. In the District Court of the United States for the Western District of Washington, Northern Division. No. 7819. *C. R. Hooper, Doing Business as Hooper Manufacturing Company, Libelant, vs. SS. "Dauntless," Her Tackle, Apparel, etc., Respondent, L. H. Coolidge et al., Intervening Libelant. No. 7798. Seattle Shipbuilding & Dry Dock Company, Libelant, v. SS. "Dauntless," Her Tackle, etc., Respondent, Kunkler Transportation & Trading Company, Claimant, etc.* Citation. Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 29, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.



[Endorsed]: No 4302. United States Circuit Court of Appeals for the Ninth Circuit. C. R. Hooper, Doing Business as Hooper Manufacturing Company, L. H. Coolidge and C. V. Hull, Copartners, as L. H. Coolidge Company, Seattle Shipbuilding and Dry Dock Company, a Corporation, Union Oil Company of California, a Corporation, Seattle Hardware Company, a Corporation, and Samuel Clark, Appellants, vs. Kunkler Transportation Company, a Corporation, and Fidelity & Deposit Company of Maryland, Appellees. Apostles. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed August 11, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

